IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3774 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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HARISH BABURAM MEHRA - Applicant(s)
Versus
HASHMUKHLAL CHAMBALAL SHAH & 1 - Respondent(s)

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Appearance :
MR BB NAIK for Petitioner.
MS TRUSHA H MEHTA for Respondent(s) : 1,
MR MUKESH PATEL, APP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 19/10/2005

ORAL JUDGMENT

1.The petitioner – original accused No. 2 has filed this petition under Section 482 of the Criminal Procedure Code praying for quashing and setting aside the Criminal Case No. 803/1994 pending before the Learned Metropolitan Magistrate, Court No. 10, Ahmedabad filed by the present respondent No. 1 for the alleged offences punishable under Sections 406, 420 & 114 of Indian Penal Code.

2.This Court has admitted the petition and granted interim relief in terms of para 14 (B) of the petition vide order dated 14.07.1997.

3.Mr. B.B. Naik, learned advocate appearing for the petitioner has submitted that the complaint filed by the respondent No. 1 does not make out

any case against the petitioner. The complaint filed by the respondent No. 1 is false and frivolous so far as the petitioner is concerned and the allegations are got up one. He has further submitted that since the respondent No. 1 is not in a position to get anything from the accused No. 1, the present complaint is filed by joining the present petitioner as original accused No. 2 to bring pressure on original accused No. 1 to give the delivery of shares or to extract money more than the value of the shares purchased by the respondent No. 1. He has further submitted that the complaint filed by the respondent No. 1 does not make out any case against the petitioner and, therefore, the complaint and order issuing process against the petitioner are required to be quashed and set aside.

4.Mr. Naik has further raised the contention

regarding jurisdiction of the learned Metropolitan Magistrate in taking cognizance of the complaint and in issuing process against the present petitioner. He has submitted that a bare perusal of the complaint clearly shows that all the meetings have held at Bombay and all the dealings were place on telephone at Bombay and no part of cause of action has arisen in Ahmedabad. The shares have been purchased by the accused No. 1 on behalf of the respondent No. 1 at Bombay. At no place in the complaint, the respondent No. 1 has shown that any part of cause has arisen in Ahmedabad which gives jurisdiction to the learned Metropolitan Magistrate at Ahmedabad to entertain the said complaint. He has, therefore, submitted that the learned Metropolitan Magistrate has no territorial jurisdiction to entertain the said complaint and, therefore, the complaint is required to be quashed and set aside.

5.Mr. Naik has further submitted that the transaction between the parties entered into are purely of civil nature for which no criminal proceeding can be initiated. The dealings are in the regular course of business of selling and purchasing of shares. He has further submitted that the dispute about sale and purchase of shares has arisen between the respondent No. 1 and the original accused No. 1 only and the original accused No. 2 – present petitioner is nowhere in the picture. He has, therefore, submitted that the complaint filed by the respondent No. 1 in respect of a dispute of civil nature is only with a view to bring pressure on the petitioner to extract money and, therefore, the same is amounting to abuse of process of the Court which is required to be prevented by this Court in exercise of powers under Section 482 of Cr.P.C.

6.Mr. Naik has further submitted that the petitioner had no dealings with the respondent No. 1 and the petitioner has never entered into any dealings of sale and purchase of shares with the respondent No. 1 at any point of time. Even the agreement arrived at between the respondent No. 1 and the original accused No. 2 to deliver 18,000/- shares of Citrik India Limited was not between the respondent No. 1 and the petitioner. Even if it is assumed that such compromise was arrived at between the parties, the same was for the shares purchased by the original accused No. 1 on behalf of the respondent No. 1 and, therefore, the present petitioner has nothing to do with the same. The present petitioner has acted as a person to bring a compromise between the two parties which can never amount to commission of an offence, much less offence punishable under

Sections 406, 420 & 114 of I.P.C.

7.Mr. Naik has lastly submitted that the complaint is not tenable at law as it is filed with ulterior motives, it is illegal and, therefore, the same is required to be quashed and set aside.

8.In support of his submissions that the complaint does not disclose any prima facie offence against the petitioner, Mr. Naik has relied on the decision of this Court in **Cri. Misc. Application Nos. 164 of 2001 with Cri. Misc. Application No. 165 of 2001 with Cri. Misc. Application No. 166 of 2001 in the case of Krishna Polyster Limited V/s. State of Gujarat decided on 27.02.2002** wherein this Court has taken the view after discussing the case law on the subject that prior to the transactions in question, there were business

transactions between the petitioners and the respondent No. 2 and the petitioners had paid the amounts to the respondent No. 2 within the stipulated time. It is true that, during the course of commercial transaction, if any offence is made out, a criminal prosecution can be launched, but, in the absence of any averments and allegations made in the complaints, the learned Magistrate, without examining as to whether the complaints and statements of the witnesses make out a prima facie case of the offences alleged, had issued summons against the petitioners. By not making payment of the delivered cotton bales and by converting the cotton bales into yarn, at the most, a civil liability has been fastened against the petitioners, for which a criminal prosecution is uncalled for.

9.Mr. Naik has further relied on the decision of

this Court in the case of **Dharamchand S/O Gopi Ram V/S. State of Gujarat, 1980 (2) G.L.R. 341** wherein this Court has held that if the facts mentioned in the F.I.R. or complaint do not constitute any offence, would it be debarring the High Court from exercising its inherent jurisdiction to secure the ends of justice. The Court has further held that if the allegations made in the F.I.R. do not prima facie disclose any offence and if it is found that the F.I.R. is lodged with the Police with some ulterior motive just to find out a short-cut to a civil suit, then this Court can exercise its special jurisdiction under Section 482 of the Code for the ends of justice, because, ultimately, by filing a chargesheet the police would attempt to use the process of the Court which may ultimately be abused.

10.Mr. Naik has further relied on the decision of

the Hon'ble Supreme Court in the case of **S.N. Palanitkar and others V/s. State of Bihar and another, AIR 2001 S.C. 2960** wherein the Hon'ble Supreme Court has observed that exercise of inherent power is available to the High Court to give effect to any order under the Cr.P.C., or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This being the position, exercise of power under S. 482, Cr.P.C. should be consistent with the scope and ambit of the same. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of Court may not be allowed to be utilised for any oblique motive. When a person approaches the High Court under S. 482 Cr.P.C. to quash the very issue of

process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection to really serve the purpose and object for which they are conferred. The Hon'ble Supreme Court has further observed that where the High Court failed to exercise jurisdiction under S. 482 Cr.P.C. to correct manifest error committed by the Magistrate in issuing process against the accused when the alleged acts against them did not constitute offences for want of satisfying the ingredients of the offences alleged, the order of the High Court refusing to interfere order of Magistrate to issue process against accused was liable to be set aside.

11.Based on the aforesaid judgments, Mr. Naik has strongly urged that the complaint does not disclose any prima facie offence against the petitioner and no ingredients of the offence

under Sections 406 & 420 have been found in the entire complaint and hence, this Court should exercise its inherent power under Section 482 of Cr.P.C. and quash the complaint.

12.Mr. Naik has further raised the contention with regard to the jurisdiction and in support of this contention, he relied on the decisions of (i) **Daulat Mansingh Aher V/s. C.R. Bansi and another, 1980 CRI. L. J. 1171** (ii) **Jagan Nath and another V/s. State of Haryana, 1983 CRI. L. J. 1574** (iii) **Bijoyanand Patnaik V/s. Mrs. K.A.A. Brinnand, AIR 1970 CALCUTTA 110** (iv) **Jai Prakash V/s. Dinesh Dayal and another, 1991 CRI. L. J. 418**. Based on these judgments, Mr. Naik has submitted that no cause of action arose within the territorial jurisdiction of the Court at Ahmedabad and hence, the learned Magistrate is not justified in taking cognizance of the offence under Section 406 &

420 of I.P.C.

13.Mr. Naik has further relied on the decision of the Hon'ble Supreme Court in the case of **Ramesh & Ors. V/s. State of Tamil Nadu, 2005 (2) SCALE 484** wherein the Court has observed that prima facie, none of the ingredients constituting the offence can be said to have occurred within the local jurisdiction of Trichy Court. Almost all the allegations pertain to acts of cruelty for the purpose of extracting additional property as dowry while she was in the matrimonial home at Mumbai and the alleged acts of misappropriation of her movable property at Mumbai. Considering the facts of the case, the Court has taken the view that nothing was in the complaint to show that any acts constituting articles demanded were taken place at Tiruchirapally and ultimately the Court has transferred the proceedings to the Court at

Chennai. Mr. Naik has, therefore, submitted that Court at Ahmedabad has no territorial jurisdiction to take cognizance and to issue the process.

14.Ms. Trusha Mehta, learned advocate appearing for the respondent No. 1 has submitted that the complaint reading as a whole discloses the offence under Section 406 & 420 of I.P.C. against the present petitioner. Several transactions were taken place at Ahmedabad and hence, it cannot be said that the Ahmedabad Court has no jurisdiction. She has relied on the decision of this Court in the case of **Keki Patel of Singapore Airlines Ltd. V/s. Dhanesh Badarmal Jain & Ors., 2002 (3) G.L.R. 2579** wherein this Court has taken the view that in view of the latest pronouncement of the Hon'ble Supreme Court in *Trisuns Chemical Industry V/s. Rajesh Agarwal, 1999 (8) S.C.C.*

686, with respect to the territorial jurisdiction of the Court taking cognizance of an offence, it would be very difficult for this Court to accept the contentions of the present petitioners that the offence has not taken place within the jurisdiction of the trial Court, and, therefore, the complaint should be quashed. She has, therefore, submitted that neither on the ground of territorial jurisdiction nor on the ground of lacking of averments with regard to commission of an offence, the complaint is required to be quashed and set aside. She has, therefore, submitted that the present petition is required to be dismissed with cost.

15.Mr. Mukesh Patel, learned Assistant Public Prosecutor appearing for the respondent No. 2 – State has submitted that there are specific averments and allegations in the complaint

which indicate that the respondent No. 1 has received the telephone calls from Bombay from the accused Nos. 1 & 2 and hence, the initiation of offence was at Ahmedabad. As per the provisions contained in Section 178 of Cr.P.C., the Court within whose jurisdiction even part of the cause of action arises is having the jurisdiction and hence, the Court at Ahmedabad has the jurisdiction to entertain the complaint. He has further submitted that though the nature of transaction may be of civil nature, it, however, does not grant any immunity to the petitioner as at the time when the transactions were entered into with regard to sale and purchase of shares, assurance and promise was given by the accused No. 1 that the delivery of shares would be effected and instead of effecting the delivery, the shares were sold to somebody else which clearly shows that there is a breach of trust. He has

further submitted that the petitioner has entered into an agreement wherein after receipt of the payment and / or adjustment, the shares of Citrik India Limited were agreed to be sold. Since the delivery was not effected, there was clear-cut intention for defrauding or committing breach of trust with the respondent No. 1 and hence, it cannot be said that there was no malice or bad intention behind the alleged transactions. While examining the case of the petitioner under Section 482, the Court has to see the averments made in the complaint and defence of the petitioner cannot be considered at this stage. During the course of trial, it can be proved whether the petitioner has committed any breach of trust or not. He has, therefore, submitted that this Court should not entertain the petition at this stage.

16.After having heard the learned advocates appearing for the respective parties and after having gone through the averments made in the complaint as well as in the petition and the authorities relied upon by the parties, the Court is of the view that there are specific averments in the complaint giving rise to constitute an offence under Section 406 and 420 of I.P.C. In para 3 of the complaint it is stated that the complainant has come into contact with the accused Nos. 1 & 2. It is also stated in the complaint that there are several transactions between the accused No. 1 and the respondent No. 1. The accused No. 1 has not effected the delivery of shares and sold to somebody else. It is also stated in the complaint that on behalf of the complainant, 10 different scripts were purchased and delivery was not effected. It is specifically stated in the complaint that the said shares were not

given by the accused No. 1 to the respondent No. 1 but they were sold to somebody else. This averment in the complaint itself is sufficient to show that the accused No. 1 has committed breach of trust as he was supposed to hand over the delivery of the shares to the respondent No. 1 and instead of giving delivery, with malafide intention, the said shares were sold to somebody else. Just to save the accused No. 1, an agreement was arrived at by the accused No. 2 and the respondent No. 1. The accused No. 2 i.e. present petitioner has given in writing that he has sold 18,000/- shares of Citrik India Limited to respondent No. 1 in presence of Shri Ashok Jain and Shantibhai Jain. It is also sated in the said writing that the present petitioner has taken cash and adjusted the amount and in lieu thereof, the said shares were sold. Once the shares are sold after

taking due consideration for the same, it is the duty and obligation of the vendor or the seller of the shares to see that the purchaser would get the shares. Simply because it is stated that the delivery will be taken by the purchaser from a third party, the obligation of the seller cannot be said to have been discharged. It is an admitted position that the respondent No. 1 has not received shares and thereafter repeated demand was made. However, the said shares were not delivered to the respondent No. 1. It is, therefore, clear that right from the beginning at the time when the agreement was entered into and writing was given on 13.01.1994, an assurance was given that he will get the delivery of shares. However, the said shares were not received by the respondent No. 1. Thus, it cannot be said that there was no such intention of committing breach of trust or cheating. The very fact

that the respondent No. 1 has not received the shares from the accused No. 2 itself is sufficient to presume that the accused Nos. 1 & 2 have committed breach of trust and cheated the respondent No. 1.

17.So far as the issue regarding jurisdiction is concerned, there is a specific averment in the complaint itself that the respondent No. 1 is at Ahmedabad and he has received the telephone calls from the accused Nos. 1 & 2 from Bombay. So initiation of the transaction was at Ahmedabad and thereafter it was resulted into culmination of meeting at Bombay. Thus, it cannot be said that the Court at Ahmedabad has no jurisdiction.

18.In light of the aforesaid factual position which has emerged from the complaint itself, the decisions relied upon by Mr. Naik will not

render any assistance to the petitioner. The main thirst of all these decisions is that when the complaint or FIR does not prima facie disclose any offence or when no cause of action arises within the territorial jurisdiction of a particular Court or a Police Station, when the necessary ingredients of the offence are not found in the offence alleged, the Court may exercise its extraordinary writ jurisdiction under Section 482 of Cr.P.C. to prevent the abuse of the process of law or to meet with the ends of justice. However, when the Court is prima facie satisfied that the complaint discloses an offence or the cause of action has arisen within the territorial jurisdiction, in that case, the Court should restrain itself from exercising its power under Section 482 of the Criminal Procedure Code. Hence, in the present case, the Court is of the view that the complaint prima facie discloses the offence and

cause of action has partly arisen within the territorial jurisdiction of the Court at Ahmedabad. Moreover, provisions contained in Section 181 (4) of Cr.P.C. also empower to the Court at Ahmedabad to take cognizance of the complaint as the delivery of shares was to be effected at Ahmedabad.

19.Taking overall view of the matter and considering the entire facts and circumstances of the case, this Court is of the view that the petitioner has not made out any case which requires interference of this Court and to exercise its extraordinary jurisdiction and inherent power under Section 482 of Cr.P.C. The petition is, therefore, dismissed. Rule discharged without any order as to costs. Interim relief granted earlier stands vacated.

[K.A. PUJ, J.]

Savariya